

HIGH COURT OF SIKKIM : GANGTOK

(Criminal Appellate Jurisdiction)

S.B. : HON'BLE MR. JUSTICE S. K. AGNIHOTRI, JUDGE

CrI.Rev.P.No.01 of 2015

Petitioner. : Kashikant Jha,
Aged about – 58 years,
Son of Late Kedar Jha.
Resident of Daragoan, Tadong,
Gangtok, East Sikkim.

Versus

Respondent : State of Sikkim

**Criminal Revision Petition under Section
397 of the Code of Criminal Procedure,
1973.**

Appearance

Mr. A. Moulik, Senior Advocate with Mrs. K.D. Bhutia and Mr. Ranjit Prasad, Advocates for the Petitioner.

Mr. Kashikant Jha, Petitioner in person.

Mr. Karma Thinlay Namgyal, Additional Public Prosecutor with Mr. S. K. Chettri and Mrs. Pollin Rai, Assistant Public Prosecutors for the State-Respondent.

ORDER

(20th June 2016)

S. K. Agnihotri, J

1. Questioning the legality and the validity of the judgment dated 05.02.2015 rendered in Criminal Appeal

No.06 of 2014 by the Court of Sessions Judge, Special Division-II, at Gangtok, East Sikkim, the instant Criminal Revision Petition under Provisions of Section 397 of the Code of Criminal Procedure, 1973 (for short "Cr.P.C.") read with Section 401 of the Cr.P.C. is filed.

2. The case of the prosecution is that on a complaint made by one Mr. Madhav Sharma S/o of Mrs. Bishnu Maya Sharma, that he had received a forged marks statement, purported to have been issued by the Central Board of Secondary Examination (CBSE), Delhi from the convict/petitioner, herein, which was surrendered to the Vigilance Police, Gangtok and on the basis of the said complaint a search warrant was issued under the authority of Chief Judicial Magistrate (East & North) at Gangtok, on 19th September, 2001.

3. On 20th September, 2001, a search of the convict's/petitioner's residence at Tadong, Gangtok, was conducted, wherefrom, total (61) sixty one documents were seized, most of the said documents were of photocopies of the marks statement, admit cards etc of the various students. One photocopy of the admit card of Madhav Sharma was also obtained. On the same day,

shop-cum-business premise owned by Mrs. Meena Jha, wife of the convict/petitioner was also raided, wherefrom, in total (60) sixty documents were recovered and seized, all containing admit cards, statement of marks of various persons. One admit card no.284 issued by the North Bengal University, in favour of the convict/petitioner for B.Ed Examination 1993 and also marks statement of the B.Ed Examination 1993 indicating him as passed and one more statement of marks of B.Ed 1995 from the same University wherein he was found failed, were also seized and recovered. Consequent thereupon, a Vigilance P.S. case No.RC-19/2001 dated 22.09.2001 under Section 468/120 B, of the Indian Penal Code (for short "IPC") was registered. On completion of the investigation, it transpired that the convict/petitioner had forged marks statement of Madhav Sharma which was marked as (Exhibit P-16).

4. It was also noticed that the marks stated in the forged marks statement of Madhav Sharma was of one Mingma Doma Sherpa of Tathangchen Secondary School, Gangtok, East Sikkim and not of Madhav Sharma. In the investigation, it was also found that the convict/petitioner had forged the other marks statements of one Navin

Dhakal of CBSE Class XII examination, Purna Kumar Sharma of Bihar Education Examination Board, Class X examination and Dhaka Devi Sharma of Bihar Education Examination Board, Class X along with other incidental documents. The charge sheet was filed in the Court of the Judicial Magistrate, First Class, in Vigilance Case No. 04 of 2009 for trial for offences punishable under Sections 467/468/474 of IPC and under Section 109 of IPC read with Section 467/468/474 of IPC.

5. The Learned Judicial Magistrate held that the offence under Section 109 read with Sections 467/468 of IPC was not made out and as such the convict/petitioner was acquitted of the said offence. However, the convict/petitioner was held guilty and convicted for the offence under Sections 467, 468 and 474 of the IPC. He was sentenced to undergo simple imprisonment for one year and to pay a fine of Rs.5,000/- (Rupees five thousand) under Section 467 IPC, in default of the payment of fine, to undergo further simple imprisonment for three months. Under Section 468, he was sentenced to undergo simple imprisonment for six months and to pay a fine of Rs.2,000/- (Rupees two thousand), in default, to undergo further simple imprisonment for one

month and further, under Section 474 IPC, he was sentenced to undergo simple imprisonment of one year and to pay a fine of Rs.5,000/- (Rupees five thousand) in default, to undergo further simple imprisonment for three months. All the sentences were to run concurrently.

6. Being aggrieved, the convict/petitioner preferred the appeal, being CrI. Appeal No.6/2014, in the Court of Sessions Judge, Special Division-II at Gangtok, East Sikkim.

7. The Learned Sessions Judge, Special Division-II at Gangtok, East Sikkim, examining all the facts of the case upheld the findings in respect of recovery and seizure of documents as mentioned in property seizure memo (Exhibit P-5) holding that the said premises was the shop-cum-residence under the occupation of wife, namely, Mrs. Meena Jha (DW-1), which was also the residence of convict/petitioner wherein Mrs. Meena Jha was operating a shop and her business of LIC Policy.

8. The Learned Sessions Judge set aside the conviction under provisions of Sections 467, 468 and 474 of IPC, holding that there is no evidence to prove that the marks statement (Exhibit P-16) of Madhav Sharma was

made by the accused person, (the convict/petitioner, herein,) as the Investigating Officer himself in the charge-sheet had categorically stated that there was no direct evidence. Other documents (Exhibits P-25 to P-30) in respect of Purna Kumar Sharma (PW-4) purportedly issued by the Bihar Examination Board were also not held to be made by the convict/accused and supplied to PW-4 as according to (PW-4) the said documents were handed over to him by one Durga Prasad Khatiwara of Salamdang, West Sikkim, who was not examined by the prosecution. The documents of School Leaving Certificate, Migration Certificate, Marks Statement and Madhyamik Passed Certificate (Exhibits P-6, P-7, P-8 and P-9 respectively), allegedly belonging to Dhaka Devi Sharma (PW-3) purportedly issued by Dr. Raghunandan Saith High School, Singhiaghat, Samastipur, Bihar, were recovered and seized from the residence of the convict/petitioner, which were found to be fake and made by the convict/petitioner. The Sessions Judge, further held that it was a case of forgery simpliciter and accordingly the convict/petitioner was rightly convicted under Section 465 of the IPC.

9. Consequently, the convict/petitioner was sentenced to undergo simple imprisonment for a term of six months and to pay a fine of Rs.1,00,000/- (Rupees one lakh) in default of making payment of the fine, he was to further undergo simple imprisonment of six more months.

10. Being aggrieved, the convict/petitioner had preferred the instant Criminal Revision Petition as aforestated.

11. Shri A. Moulik, Learned Senior Counsel referring to certain parts of statements made by the Investigation Officer, Mrs. Doma Chamzo (PW-1), Dr. D. K. Sarkar, the Controller of Examination, North Bengal University (NBU) (PW-30), Ramdulari Kumari, Head Mistress of Model Inter School, Samastipur, Bihar (PW-31) and the Investigating Officer (I.O.), Mr. Dhan Singh Rai (PW-32), would contend that no case of forgery as defined under Section 463 of IPC is made out.

12. Mr. A. Moulik would further contend that no witness has stated that the convict/petitioner has committed forgery with intention to commit any wrongful loss to anybody. Further no evidence has come forward

to establish that the convict/petitioner had made any gain from the aforestated seized documents.

13. The next contention of Mr. Moulik is that the marks sheet of B.Ed examination 1993 (Document –D), letter of the Controller of Examination (Exhibit-44) wherein, it is stated that the convict/petitioner has failed in the B.Ed Examination in the year 1993 and also in the year 1995 and the said document was tampered one, and also other documents are the photocopies and the prosecution have failed to produce the original of the same. It is further urged that the convict/petitioner had not used the said purported B.Ed examination marks sheet, 1993 for any gain or loss caused to any.

14. Mr. Moulik would further contend that the charge sheet which is corroborated by the deposition of the investigating Officer clearly indicates that there are no direct evidence of forgery against the convict/petitioner. The documents (Exhibits P-6 to P-9) allegedly prepared for Mrs. Dhaka Devi Sharma, was not produced before any authority or anybody for gain and have not caused any wrongful loss. The aforestated documents were seized from the wife of the convict/petitioner, who is admittedly LIC agent and kept

the said documents for the purpose of verification of date of birth of the persons concerned.

15. On the question of sentence of fine to the tune of Rs.1,00,000/- (Rupees one lakh), Mr. Moulik, would contend that the provisions of Section 386(a) of the Cr.P.C., the Appellate Court is obliged to pass the sentence of the convict/petitioner according to law under Section 29 of the Cr.P.C. The First Class Magistrate is empowered to impose fine not more than 10,000/- (Rupees ten thousand), and as such, under provisions of Section 28, the fine cannot be more than what the First Class Magistrate is empowered to do.

16. In response, Mr. Karma Thinlay Namgyal, Learned Additional Public Prosecutor, would submit that the evidence of Dhaka Devi Sharma (PW-3) is very clear wherein she has unerringly stated that the documents (Exhibits P-6 to P-9) were prepared by the convict/petitioner as the convict/petitioner had offered to provide for the Class X pass certificate and for that purpose he had taken down her bio-data. It was further stated that the amount fixed for the said certificate was Rs.10,000/- (Rupees ten thousand). However, the same could not be taken as she did not pay the said amount.

17. It is further submitted that the stated documents were seized from the bed room of the convict/petitioner and the convict/petitioner in his statement under Section 313 has not explained of the existence of said documents. In respect of B.Ed Examination Certificate 1993, found in the bedroom of the convict/petitioner, it was clearly stated by the Controller of Examination that it was not issued by the University and also the convict/petitioner has never passed B.Ed Examination in 1993 and subsequently, in 1995 also, he failed, the convict/petitioner has failed to explain, excepting a denial simplicitor.

18. Referring to a decision of the ***State of W.B. vs. Mir Mohammad Omar and Ors***,¹ it was contended that there is a clear presumption that the said documents were made by the convict/petitioner, as prescribed under provisions of Section 114 of the Evidence Act.

19. I have given anxious consideration to the submissions advanced by the Learned Senior Counsel as well as the Learned Additional Public Prosecutor. I have also examined all the evidences, impugned judgment and

1. (2000) 8 SCC 382

also the judgment rendered by the Trial Court carefully.

20. It is evident that the complaint of Madhav Sharma to the effect that he was given the Secondary School Examination pass marks statement by the convict/petitioner, when Madhav Sharma failed in the written examination, necessitated raid of the residence of the convict/petitioner as well as the shop-cum-business premises owned by his wife. The same resulted into seizure of as many as 61 incriminating documents from one place and 60 from other place. In the Court below, it could not be established by the prosecution that all the documents were forged by the convict/petitioner. However, in respect of documents (Exhibits P-6 to P-9) i.e., School Leaving Certificate, Migration Certificate, Marks Statement and Madhyamik Passed Certificate of all Dhaka Devi Sharma, seized from the bedroom of the convict/petitioner were found to be forged as corroborated by the evidence of (PW-3).

21. Further, the convict/petitioner has no explanation how the said documents came into his possession. The inquiry made from Dr. Raghunandan Saith High School, Singhiaghat, Samastipur, Bihar,

[Exhibit 45(b)] clearly indicated that Dhaka Devi Sharma never appeared in the main or supplementary Secondary Examination in 1989 from the School and passed thereon. Dhaka Devi Sharma (PW-3) has clearly stated in her deposition that she had never written any examination and also did not pass any examination as per the seized documents. Thus, it is luculent that the aforestated documents found in possession of the convict/petitioner, for want of any explanation in his statement, have been manufactured by the convict/petitioner.

22. In respect of B.Ed pass certificate 1993, it has come on the record from the statement of Dr. D. K. Sarkar, (PW-30), Controller of Examination, North Bengal University, that no such certificate was issued in favour of the convict/petitioner, though the convict/petitioner appeared in 1993 as well as in 1995 for the B.Ed Examination, but unsuccessfully. This document of 1993 is also held to be manufactured by him.

23. The next question which arises for consideration is asto whether if the forged documents are not used for gain are no loss is caused to the public or to

any person, or authority, whether it comes under the definition of forgery as enshrined under Section 463 IPC.

24. In order to appreciate, the ambit and scope of the provisions, the same is extracted as under:

“463. **Forgery**.-[Whoever makes any false documents or false electronic record of part of a document or electronic record, with intent to cause damage or injury], to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery.”

25. In *Monica Bedi vs. State of Andhra Pradesh*² cited by the Learned Senior Counsel for the convict/petitioner, the Supreme Court held that to satisfy the ingredients of Section 463 there should be an intention to cause damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud, in following words:-

“47. In our considered opinion, the High Court was not justified in convicting Mohd. Yunis (A-7) at all for it had found no case against the appellant made out under Section 120-B IPC and further found that there is no evidence to assume that he was hand in glove with the other accused for the purpose of cheating. That there is no

evidence that A-7 prepared false document with intent to cause damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud. The ingredients of Section 463 are not satisfied. In such an event the conviction of the appellant under Section 465 IPC is unsustainable.”

26. In ***Sushil Suri vs. Central Bureau of Investigation and Anr.***³, the Supreme Court laid down, the basic elements of forgery as defined under Section 460 as under:-

“26. Similarly, the definition of “forgery” in Section 463 IPC is very wide. The basic elements of forgery are:-

- (i) the making of a false document or part of it, and
- (ii) such making should be with such intention as is specified in the section viz.
 - (a) to cause damage or injury to
 - (i) the public, or
 - (ii) any person; or
 - (b) to support any claim or title; or
 - (c) to cause any person to part with property; or
 - (d) to cause any person to enter into an express or implied contract; or
 - (e) to commit fraud or that fraud may be committed.”

27. In ***Mir Nagvi Askari vs. Central Bureau of Investigation***⁴, cited by the petitioner, the Supreme Court dealing with the basic ingredients, held as under:-

“163. These three offences deal with

3. (2011) 5 SCC 708

4. (2009) 15 SCC 643

substantially what is known as forgery, defined in section 463 or making of a false document which is provided under Section 464. It is reproduced heretobelow:

“464. *Making a false document.*-A person is said to make a false document or false electronic record-

First.-Who dishonestly or fraudulently –

(a) makes, signs, seals or executes a document or part of a document;

(b) makes or transmits any electronic record or part of any electronic record;

(c) affixes any digital signature on any electronic record;

(d) makes any mark denoting the execution of a document or the authenticity of the digital signature,

with the intention of causing it to be believed that such document or part of document, electronic record or digital signature was made, signed, sealed, executed, transmitted or affixed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, executed or affixed; or

Secondly.- who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document or an electronic record in any material part thereof, after it has been made, executed or affixed with digital signature either by himself or by any other person, whether such person be living or dead at the time of such alteration; or

Thirdly.-Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document or an electronic record or to affix his digital signature on any electronic record knowing that such person by reason of unsoundness of mind or intoxication cannot, or that

by reason of deception practiced upon him, he does not know the contents of the document or electronic record or the nature of the alteration”.

164. A person is said to make a false document or record if he satisfies one of the three conditions as noticed hereinbefore and provided for under the said section. The first condition being that the document has been falsified with the intention of causing it to be believed that such document has been made by a person, by whom the person falsifying the document knows that it was not made. Clearly the documents in question in the present case, even if it be assumed to have been made dishonestly or fraudulently, had not been made with the intention of causing it to be believed that they were made by or under the authority of someone else. The second criterion of the section deals with a case where a person without lawful authority alters a document after it has been made. There has been no allegation of alteration of the voucher in question after they have been made. Therefore, in our opinion the second criterion of the said section is also not applicable to the present case. The third and final condition of Section 464 deals with a document, signed by a person who due to his mental capacity does not know the contents of the documents which were made i.e. because of intoxication or unsoundness of mind, etc. Such is also not the case before us. Indisputably therefore the accused before us could not have been convicted with the making of a false document.

165. The learned Special Judge, therefore, in our opinion, erred in holding that the accused had prepared a false document, which clearly having regard to the provisions of the law, could not have been done.

166. Further, the offence of forgery deals with making of a false document with the specific intentions enumerated therein. The said section has been reproduced below.

“463. *Forgery* – Whoever makes any false documents or false electronic record or part of a document or electronic record, with intent to cause damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any

express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery.”

However, since we have already held that the commission of the said offence has not been convincingly established, the accused could not have been convicted for the offence of forgery. The definition of “false document” is a part of the definition of “forgery”. Both must be read together. [*Vimla (Dr.) v. Delhi Admn.*] Accordingly, the accused could not have been tried for offence under Section 467 which deals with forgery of valuable securities, will, etc. or Section 471 i.e. using as genuine a forged document or Section 477-A i.e. falsification of accounts. The conviction of the accused for the said offences is accordingly set aside.”

28. The case of ***Jibrial Diwan Vs. State of Maharashtra***⁵, cited by Mr. Moulik, is of no assistance to the facts for the instant case as the said case deals with cheating and as such, I am not inclined to deal with the same.

29. In ***Bank of India vs. Yeturi Maredi Shanker Rao and Another***⁶, the accused was convicted for an offence under Section 420 and also for an offence under Section 467 read with Section 109 and also under Section 471, the Supreme Court noticing that the accused used

5. AIR 1997 SC 3424

6. (1987) 1 SCC 577

the forged documents and obtained money, held as under:-

“15. As regards the offence under Section 467 read with Section 109, the learned High Court acquitted the respondent because it came to the conclusion that there is no evidence to establish as to who forged the signatures of PW 1 on the withdrawal form. It is no doubt true that so far as the evidence about the forgery of the signatures of PW 1 on the withdrawal form is concerned there is no evidence except the fact that the signatures are forged and the further fact that this withdrawal form was in the possession of respondent-accused who presented it in the Bank and obtained money therefrom and pocketed the same. From these facts an inference could safely be drawn that it was the respondent-accused who got signatures of PW 1 forged on this document as it was he who used it to obtain money from the Bank from the account of PW 1 and pocketed the same. It is no doubt true that there is no evidence as to who forged the signatures of the withdrawal form but the circumstances indicated above will lead to the only inference that it was the accused-responder who got the signatures of PW 1 forged on the withdrawal form. In this view of the matter therefore the acquittal of the respondent for an offence under Section 467 read with Section 109 also could not be justified.”

30. It is eloquent from the aforestated judicial pronouncements that the basic ingredients to satisfy the definition of “forgery” is not that actual gain is to be made or loss be caused to the public or any person. The basic requirement is an intention which may be derived from the conduct of the accused and also from other

evidences. Plain reading of the definition of the “forgery” as enshrined under Section 463 of the Indian Penal Code (for short “I.P.C.”) makes it clear that making of any false documents with intent to cause damage or injury or to any person with intent to commit fraud amongst, committing her forgery, is essential requirement.

31. It is apt to refer to an observation of the Supreme Court in ***State of W.B. vs. Mir Mohammad Omar and Ors,***¹ (Supra) which reads as under:-

“31. The pristine rule that the burden of proof is on the prosecution to prove the guilt of the accused should not be taken as a fossilized doctrine as though it admits no process of intelligent reasoning. The doctrine of presumption is not alien to the above rule, nor would it impair the temper of the rule. On the other hand, if the traditional rule relating to burden of proof of the prosecution is allowed to be wrapped in pedantic coverage, the offenders in serious offences would be the major beneficiaries and the society would be the casualty.

32. In this case, when the prosecution succeeded in establishing the afore-narrated circumstances, the court has to presume the existence of certain facts. Presumption is a course recognized by the law for the court to rely on in condition such as this.”

32. In the case on hand, the documents (Exhibits P-6 to P-9) were created by the convict with intention, knowing fully well that the said documents may facilitate the person concerned to obtain some benefit and cause fraud on the person and authority. Commission of an offence of fraud is not necessary. Thus, even if the

documents could not be delivered or payment could not be received and the same was not used for any purpose, the forgery stands committed.

33. Accordingly, the entire acts come within the definition of “forgery”. Once forgery is committed, the convict/petitioner is liable to be convicted under provisions of Section 465 of IPC. As a sequel, I have no hesitation to hold that the impugned judgment rendered by the Appellate Judge is just, proper and lawful.

34. Coming to the next question of imposition of fine to the tune of Rs.1,00,000/- (Rupees one lakh) Section 28 of Cr.P.C. provides for imposition of sentences by High Courts and Sessions Judges, as authorised by law Section 29 prescribes that a Magistrate of the First Class may, *interalia*, impose fine not exceeding Rs.10,000/- (Rupees ten thousand) along with sentence of imprisonment for an term not exceeding three years or both. The Appellate Authority, as prescribed under 386(a) of Cr.P.C. may impose sentence, according to law. Thus, the Appellate Authority exercises the same jurisdiction while examining a case for an offence punishable under Section 365 IPC, which is triable by a Magistrate, First Class, who does not have power to impose fine exceeding

Rs.10,000/- (Rupees ten thousand). Accordingly, imposition of fine of Rs.1,00,000/- (Rupees one lakh) is without jurisdiction and as such it needs modification by way of reducing it to Rs.10,000/- (Rupees ten thousand).

35. Resultantly, I modify and reduce the fine amount from Rs.1,00,000/- (Rupees one lakh) to Rs.10,000/- (Rupees ten thousand), and it is further modified to the extent that in default to pay the fine amount the convict/petitioner shall further undergo simple imprisonment for a period of three more months. Imposition of sentence to undergo simple imprisonment for a term of six months is maintained.

36. The convict/petitioner shall deposit the fine amount to the State exchequer within 30 (thirty) days from today, i.e., on or before 20.07.2016. The period of imprisonment already undergone by the convict/petitioner shall be set off against the sentence of imprisonment for 6 (six) months, as ordained hereinabove.

37. It is stated that the convict/petitioner was taken into custody on 26.09.2001 and continued therein till 27.03.2002 and as such he has completed six months

one day incarceration, accordingly no further imprisonment is required.

38. The petition is, accordingly, partly allowed.

39. A copy of this order be transmitted to the Learned Trial Court forthwith with the entire case records called for be returned to the Learned Trial Court.

(S.K. Agnihotri)
Judge
20-06-2016

Approved for reporting : Yes

Internet : Yes

to